APPEAL NO. 041585
FILED AUGUST 20, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on April 7, 2004, with the record closing on June 4, 2004. The hearing officer determined that the appellant's (claimant herein) compensable injury of _____, does not extend to include herniated discs at C5-6, C6-7, or C7-T1; that the issue of impairment rating (IR) is not ripe for adjudication; and that the issue of supplemental income benefits (SIBs) for the first quarter is also not ripe for adjudication. The claimant appeals, contending these determinations were contrary to the evidence and alleging bias on the part of the hearing officer. The respondent (carrier herein) replies that the decision of the hearing officer should be affirmed.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

We have held that the question of the extent of an injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

In the present case, there was simply conflicting evidence on the issue of extent of injury, and it was the province of the hearing officer to resolve these conflicts. Applying the above standard of review, we find that the hearing officer's decision regarding the extent of injury was sufficiently supported by the evidence in the record.

In the present case the issues of IR and SIBs turn upon the issue of extent of injury. Thus, we find no error in the hearing officer finding that these issues were not yet ripe for adjudication as her extent-of-injury determination may affect the IR, which in turn may affect the claimant's eligibility for SIBs.

As far as the allegations of bias are concerned, we find nothing in the record that shows the hearing officer was biased.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

LEE MALO
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Edward Vilano
Appeals Judge